

Appln. No.: 10/648,726
Amdt. dated Aug. 18, 2005
Reply to Office action of Aug. 5, 2005

REMARKS

Claims 43-82 of the present application stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13, 20, 22-33, 43-49, 50 and 52-54 of U.S. Patent No. 6,665,536.

Claims 72-78 of the present application stand rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claims the subject matter which Applicant regards as the invention.

For at least the reasons stated below, Applicant respectfully traverses the above rejections and submits that claims 43-82 are allowable.

Applicant does not agree with the rejection of pending claims 43-82 under the judicially created doctrine of obviousness-type double patenting, but nevertheless is submitting a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c), disclaiming the terminal part of this application that extends beyond the expiration date of commonly owned U.S. Patent No. 6,665,536, to obviate the double patenting rejection. Applicant respectfully submits that the obviousness type-double patenting rejection is overcome.

Turning next to the rejection of claims 72-78 under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, Applicant respectfully traverses this rejection. The Office Action states that independent claims 72 and 78 contain the phrase "capable of," which is not a positive limitation.

The Manual of Patent Examining Procedure, in § 2173.05(i), states that all limitations do not have to be positive. For example, the MPEP states that the current view of the courts does not follow the older cases that were critical of negative limitations. Applicant respectfully submits that the phrase "capable of" is a definite phrase having clear meaning to one of skill in the art. Nevertheless, to expedite issuance of the present application, claims 72 and 78 have been amended to utilize alternative language. Applicant respectfully submits that independent claims

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72 and 78, as currently amended, are allowable under 35 U.S.C. § 112, ¶ 2, as are claims 73-77, which depend from claim 72.

In view of the foregoing, it is respectfully submitted that the pending claims define allowable subject matter. Applicant respectfully requests that the present case pass to allowance. If anything remains in order to place the present application in condition for allowance, Examiner is kindly invited to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge additional fee(s) or credit overpayment(s) to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Dated: August 18, 2005

Respectfully submitted,



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